

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
JAMES THOMAS HUSKISSON)	CASE NO. 08-22231 JPK
PHYLLIS ANN HUSKISSON,)	Chapter 13
)	
Debtors.)	

ORDER ON APPLICATION FOR PLAN TO BE COMPLETED IN MORE
THAN THREE YEARS BUT NOT OVER FIVE YEARS ("APPLICATION")

The Application, filed on July 14, 2008, requests that the court enter "a specific Order allowing payments on their Chapter 13 Plan to be made over a period of up to five (5) years". The Application has apparently been filed in consonance with a practice traditionally utilized in the Hammond Division of the United States Bankruptcy Court for the Northern District of Indiana in order to provide for a plan term of longer than three years pursuant to 11 U.S.C. § 1322(d)(2). This section provides that "the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves the longer period, but the court may not approve a period that is longer than 5 years". Interestingly, the foregoing provision does not include the phrase "after notice and a hearing" [11 U.S.C. § 102(1)], which requires either that an actual hearing be conducted or an opportunity for a hearing be provided. Due to the lack of this term, the court does not deem it necessary that a separate motion be filed to extend the term of the plan pursuant to 11 U.S.C. § 1322(d)(2) if the plan as proposed by the debtor itself provides for a term of in excess of the three years allowed by that statutory provision. In the event that the plan as submitted for confirmation provides for this extension of the three year period, then the court's confirmation of that plan constitutes a finding that the plan complies with 11 U.S.C. § 1325(a)(1), which by its terms would include the court's implicit finding of cause under § 1322(d)(2) for extension of the term of the plan.

It should be noted that this interpretation of the manner in which the court will determine

“cause” for extension of the term of the plan in a circumstance in which the proposed plan itself provides for a term of in excess of three years is limited to the undersigned judicial officer, and is not endorsed by the Honorable Kent Lindquist.

The determination of “cause” for extension of the term of the plan beyond three years is therefore part of the confirmation process, and it is neither necessary nor appropriate that a separate motion be filed with respect to the extension of the term of a plan which itself provides for a term of longer than three years.

IT IS ORDERED that the court will take no action with respect to the Application, and that determination of any extension of the term of the plan beyond three years will be considered with respect to whether or not the plan may be confirmed under the provisions of 11 U.S.C. § 1325.

Dated at Hammond, Indiana on July 31, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee